

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 917 Cattle Market Development Act

SPONSOR(S): Agriculture & Natural Resources Subcommittee; Combee and others

TIED BILLS: None **IDEN./SIM. BILLS:** SB 1220

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---------------------|---------|--|
| 1) Agriculture & Natural Resources Subcommittee | 11 Y, 0 N, As CS | Gregory | Blalock |
| 2) Agriculture & Natural Resources Appropriations Subcommittee | 12 Y, 0 N | Lolley | Massengale |
| 3) State Affairs Committee | | | |

SUMMARY ANALYSIS

In 2004, the Legislature passed SB 1770, which created the Beef Market Development Act (Act) to promote the growth of the cattle industry in the state. The Act also created the Florida Beef Council, Inc. (Council), a not-for-profit corporation organized to operate as a direct-support organization under the Department of Agriculture and Consumer Services (DACS). In addition, the Act authorized the Council to impose a \$1 maximum assessment on each head of cattle sold in the state if the imposition of the assessment is approved by referendum as described below. However, SB 1770 provided that the \$1 assessment established under the Act would not be imposed unless the national beef assessment program was repealed, stayed, or enjoined by the U.S. Congress, by a court, or by other operation of law. The U.S. Supreme Court ruled that the national program was constitutional, and therefore, the \$1 assessment established in the Act has never been implemented.

The bill amends current law to rename the Act to the Cattle Market Development Act, and for purposes of the Act, replace the Florida Beef Council, Inc. (Council), with the Florida Cattle Enhancement Board, Inc. (Board), a direct-support organization for DACS.

The bill:

- Establishes procedures for the Board to administer a state beef assessment program that charges an assessment of up to \$1 on each head of cattle sold in the state if the program is approved by a simple majority vote of the cattle producers. This assessment will be in addition to the \$1 assessment by the national beef program;
- Requires the Board to use the proceeds from the assessment to promote beef and beef products;
- Sets forth criteria to be a Board member;
- Sets forth powers and duties of the Board;
- Directs adoption of bylaws to govern the day-to-day operations of the Board;
- Establishes procedures to hold referenda to approve the assessment, modify the assessment, raise the assessment above \$1, and continue the assessment;
- Establishes procedures to collect the assessment;
- Establishes procedures to refund the assessments on request;
- Authorizes the Board to accept grants and gifts; and
- Authorizes the Board to make payments to organizations for services performed.

The bill appears to have no impact on state or local government, but does have an impact on the private sector. See Fiscal Analysis & Economic Impact Statement.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Beef Market Development Act

In 2004, the Legislature passed SB 1770, creating the Beef Market Development Act (Act).¹ The Act provides that it is the intent of the Legislature for the Act to:

- Promote the growth of the cattle industry in the state;
- Assure the public an adequate and wholesome food supply;
- Provide for the general economic welfare of producers and consumers of beef and the state; and
- Authorize the beef cattle production and feeding industry of the state with the authority to establish a self-financed, self-governed program to help develop, maintain, and expand the state, national, and foreign markets for beef and beef products that are produced, processed, or manufactured in this state.²

The Legislature created the Act in response to a ruling by the U.S. Eighth Circuit Court of Appeals, which held that the national beef assessment program is unconstitutional because it violates the First Amendment by compelling individuals to support financially private speech.³ The national beef assessment program charges a \$1 assessment for each head of cattle sold.⁴ Funds from the national beef program are expended on advertising, marketing, education, and research programs all aimed at stimulating beef sales.⁵

Section 2 of SB 1770 (2004) included an effective date which provided that the \$1 assessment established under the Act would not be imposed until the national beef program was repealed, stayed, or enjoined by the U.S. Congress, by a court, or by other operation of law.⁶ The U.S. Supreme Court later held the national beef program to be constitutional because the type of speech of which it compelled financial support was not private speech, but government speech.⁷ Compelled funding of government speech is constitutional because, as a general rule, government may support valid programs and policies by taxes or other exactions binding on protesting parties.⁸ Thus, the Florida beef assessment program has never been implemented.

The Florida Beef Council, Inc., (Council) created by the Act did not perform the powers of the Act because the Florida beef assessment program was never implemented. The Council does implement the national beef program.⁹ Under this program, \$.50 of the national beef assessment goes to state programs while \$.50 of the assessment goes to national programs.¹⁰

If the national beef assessment program is ever repealed, stayed, or enjoined, the Council could implement the Florida beef assessment program, discussed below.

Florida Beef Assessment Program

¹ Section 570.83, F.S.

² Section 570.83(2), F.S.

³ Senate Staff Analysis and Economic Impact Statement, Senate Bill 1770 p. 2 (April 13, 2004); See Livestock Marketing Ass'n v. U.S. Dep't of Agriculture, 335 F.3d 711 (8th Cir. 2003).

⁴ 7 U.S.C. § 2904.

⁵ Id.

⁶ Chapter 2004-65, Laws of Fla.

⁷ Johanns v. Livestock Marketing Ass'n, 544 U.S. 550 (2005).

⁸ Id. at 559.

⁹ Beef Board, *State Beef Councils*, <http://www.beefboard.org/qsbc.asp> (last visited February 25, 2015).

¹⁰ 7 U.S.C. § 2904; Beef Board, *Understanding Your Beef Checkoff Program*, p. 5 available at <http://www.beefboard.org/> (last visited February 25, 2015).

Florida Beef Council, Inc.

The Act creates the Florida Beef Council, Inc. (Council), a not-for-profit corporation organized to operate as a direct-service organization under the Department of Agriculture and Consumer Services (DACS). In addition, the Act authorizes the Council to impose a \$1 maximum assessment on each head of cattle sold in the state if the imposition of the assessment is approved by referendum as described below.¹¹

The Act defines the following terms used in the Act:

- “Beef” or “beef products” means products of beef intended for human consumption which are derived from any bovine animal, regardless of age, including, but not limited to, veal.
- “Cattle” means animals so designated by federal law, which includes all bovine animals. A cow and nursing calf sold together are considered one unit.
- “Council” means the Florida Beef Council, Inc.
- “Department” means the Department of Agriculture and Consumer Services.
- “Collection agent” means a person who sells, offers for sale, markets, distributes, trades, or processes cattle that have been purchased or acquired from a producer or that are marketed on behalf of a producer and also includes meatpacking firms and their agents which purchase or consign to purchase cattle.
- “Person” means any natural person, partnership, corporation, company, association, society, trust, or other business unit or organization.
- “Producer” means a person that has owned or sold cattle in the previous calendar year or presently owns cattle.¹²

The Act also requires the Council to:

- Establish the amount of the assessment at not more than \$1 per head of cattle;
- Develop, implement, and monitor a collection system for the assessment;
- Coordinate the collection of the assessment with other states;
- Establish refund procedures;
- Conduct referenda on the assessment;
- Plan, implement, and conduct programs of promotion, research, and consumer information or industry information to strengthen the cattle industry in the state and in the nation and to maintain and expand domestic and foreign markets and expand uses for beef and beef products;
- Use the proceeds of the assessment for funding cattle production and beef research, education, promotion, and consumer and industry information in the state and in the nation;
- Plan and implement a cattle and beef industry feedback program in the state;
- Coordinate research, education, promotion, industry, and consumer information programs with any national programs or programs of other states;
- Develop new uses and markets for beef and beef products;
- Develop and improve methods of distributing beef and beef products to the consumer;
- Develop methods of improving the quality of beef and beef products for the benefit of consumers;
- Inform and educate the public concerning the nutritive and economic values of beef and beef products;
- Serve as liaison within the beef and other food industries of the state and elsewhere in matters that would increase efficiencies that ultimately benefit both consumers and industry;
- Buy, sell, mortgage, rent, or improve, in any manner that the Council considers expedient, real property or personal property, or both;
- Publish and distribute information as the board of directors deems appropriate;
- Do all other acts necessary or expedient to achieve the purposes of the Council; and
- Approve an annual plan, budget, and audit.¹³

¹¹ Section 570.83(4), F.S.

¹² Section 570.83(3), F.S.

The Council is prohibited from:

- Participating in a political campaign;
- Using receipts to benefit directors, officers, or other private persons, except that the Council may pay reasonable compensation for services rendered by staff employees and may make payments and distributions to further the purposes of the Act;
- Participating in activities prohibited for not for profit corporations under federal tax law; or
- Pursuing any activities that are not in furtherance of the Council's specific and primary purposes.¹⁴

Governing Board

The Act establishes the Council's governance structure. The Act creates a 13-member board of directors composed of:

- Eight representatives of the Florida Cattlemen's Association, of whom one must represent the Florida Association of Livestock Markets, and one must represent practicing order buyers;
- One representative of the Dairy Farmers, Inc.;
- One representative of Florida CattleWomen, Inc.;
- One representative of the Florida Farm Bureau Federation;
- One representative of an allied-industry; and
- One representative of the Institute of Food and Agricultural Sciences (IFAS).¹⁵

The Commissioner of Agriculture (Commissioner) may appoint an ex-officio, nonvoting member to the board.¹⁶

The term of each member of the board of directors is three years with a limit of two consecutive terms.¹⁷ Members are required to be Florida residents who have been cattle producers for the immediately preceding five years, except for the last three representatives mentioned above.¹⁸

Members can be reimbursed for travel, but are not entitled to a salary.¹⁹ A director may be removed if he or she misses three meetings of the board.²⁰ The statute requires the board to adopt bylaws to establish the Council's officers and to establish duties and responsibilities.²¹

Referenda on Assessments

To determine whether the cattle producers would like to impose an assessment that is funded through mandatory, but refundable, contributions, the Act requires that there be a referendum in which each cattle producer is entitled to one vote by secret ballot.²² The referenda are required to be conducted at the extension offices of IFAS or the United States Department of Agriculture. Any issue subject to referendum must be determined by a simple majority of the votes cast.²³ Notice of a referendum is required to be given at least once in trade publications, the public press, and statewide newspapers at least 30 days before the referendum is held.²⁴ Additional referenda can be held to authorize the Council to increase the assessment to more than \$1 per head of cattle.²⁵ Referenda cannot be held more often than once every three years.²⁶

¹³ Section 570.83(4)(b)&(c), F.S.

¹⁴ Section 570.83(4)(d), F.S.

¹⁵ Section 570.83(5)(a), F.S.

¹⁶ Section 570.83(5)(c), F.S.

¹⁷ Section 570.83(5)(b), F.S.

¹⁸ Id.

¹⁹ Id.

²⁰ Section 570.83(5)(d), F.S.

²¹ Section 570.83(5)(c), F.S.

²² Section 570.83(6), F.S.

²³ Section 570.83(6)(e), F.S.

²⁴ Section 570.83(6)(b), F.S.

²⁵ Section 570.8396)(c). F.S.

²⁶ Id.

Powers and Duties of the Council

The Council is required to establish an office in the state, to receive and disburse funds to be used in implementing the programs, to keep books and records maintained in the ordinary course of business, to prepare reports as required, and to appoint a banking institution to receive the program funds and handle distribution.²⁷

The Council is authorized to conduct or contract for research programs, disseminate information benefiting the consumer and the beef industry, and respond to requests from government bodies concerning beef. It may also sue and be sued as a Council without individual members being liable for acts within the scope of the powers of the Act. The Council may borrow money and maintain emergency reserves in amounts not to exceed 50 percent of the anticipated annual income of the Council. The Council is also authorized to appoint advisory groups, hire and administer a staff of employees, and cooperate with other entities having similar objectives. The Council may send an authorized agent upon the premises of any market agency or agent, or collection agency or agent, to examine the accounts to ensure the payment of assessments due, and perform all other acts to further its objectives not prohibited by law.²⁸

Acceptance of Grants and Gifts

The Council is authorized to receive grants and donations provided that there were no restrictions that it considers to be inconsistent with the objectives of the Florida beef assessment program.²⁹

Payments to Organizations

The Council is authorized to fund other organizations for services rendered through a written agreement consistent with the objectives of the Florida beef assessment program.³⁰

Collection of Moneys at Time of Marketing

The Act provides procedures for the collection and remission of assessments at the time of sale by a collection agent. The Council is required to maintain a separate accounting of all assessments. The Council can cooperate with other beef councils to collect the assessment for cattle from other states sold in Florida or from Florida cattle sold in other states. If a person fails to pay the assessment, the Council can bring a civil action against that person in the circuit court of any county and can add a penalty in the amount of the sum of 10 percent of the assessment owed the cost of enforcing the collection of the assessment, court costs, and reasonable attorney's fees.³¹

Refunds

A producer of cattle may obtain a full refund upon request within 45 days after the sale transaction takes place, and any disputes will be settled in the same manner as collection disputes. The Council is required to take action on refund requests within 30 calendar days from the date of receipt of the request.³²

Vote on Continuing the Assessment

A referendum to vote to continue the Act may be held once in a three-year period if the Council receives petitions from at least 1,800 producers or 10 percent of Florida's producers as determined by

²⁷ Section 570.83(7)(a), F.S.

²⁸ Section 570.83(8)(b), F.S.

²⁹ Section 570.83(8), F.S.

³⁰ Section 570.83(9), F.S.

³¹ Section 570.83(10), F.S.

³² Section 570.83(11), F.S.

DACS, whichever is less. Petitioners are required to collect the signatures within a 12-month period. Within 90 days of receiving the petitions, the Council must conduct a referendum to determine whether a majority of the producers voting support the continuation of the Act.³³

Bylaws

The Council is directed to adopt bylaws to carry out the intent and purposes of the Act. The statute also provided procedures for amending the bylaws.³⁴

Repeal

Lastly, the statute provides that it would be repealed on October 1, 2019, if not reviewed and saved by the Legislature.³⁵ The Legislature added this provision in 2014 as part of a comprehensive effort to create new reporting and transparency requirements for each citizen support organization (CSO) and direct support organization (DSO) that aids an executive agency.³⁶

Effect of Proposed Changes

Cattle Market Development Act

This bill amends s. 570.83, F.S., to give effect to the current law by establishing a new Florida beef assessment program and includes various revisions to the Act. The bill:

- Renames the statute the “Cattle Market Development Act;”
- Creates the Florida Cattle Enhancement Board, Inc.; and
- Creates a new Florida beef assessment program that is separate from and in addition to the national beef assessment program.

The bill amends the definition of “cattle” in s. 570.83(3), F.S., to eliminate the provision that treats a cow and a calf sold together as one unit. Thus, under the new Florida beef assessment program, a producer will pay an assessment for both the cow and the calf.

The bill amends s. 570.83(4), F.S., to create the Florida Cattle Enhancement Board (Board), a not-for-profit corporation organized to operate as a direct-service organization under DACS. Activities of the Board are to be financed by an assessment of not more than \$1 on each head of cattle sold in the state. This assessment is in addition to the \$1 assessment for the national beef assessment program. This assessment must be approved by a referendum of cattle producers.

The bill grants the Board the same powers as the Council by amending ss. 570.83(4) and (7), F.S., to consolidate the duties and powers into subsection (7) and eliminating some duplicative powers. The bill also prohibits the Board from exercising certain powers in the same manner that the Beef Market Development Act prohibited the Council from exercising certain powers. Notably, the bill does not grant the Board the power to sue or be sued. Nor does the bill protect Board directors from personal liability when acting within the scope of powers set forth in the Cattle Market Development Act. This may be because the Board will be a not-for-profit corporation. Not-for-profit corporations may sue or be sued under s. 617.0302(2), F.S. Further, directors of not-for-profit corporations are already afforded liability protection under s. 617.0834, F.S.

Under s. 570.83(5), F.S., the Board will be composed of the same group of representatives as the Council, except the Commissioner will appoint a representative from DACS instead of appointing an ex officio nonvoting member. The initial board of directors will be appointed by the Commissioner for staggered terms of 1 year for three members, 2 years for three members, 3 years for four members, and 4 years for four members. Board directors must meet the same qualifications as Council directors.

³³ Section 507.83(12), F.S.

³⁴ Section 507.83(13), F.S.

³⁵ Section 507.83(14), F.S.

³⁶ Senate Bill Analysis and Fiscal Impact Statement, Senate Bill 1194 p. 1 (March 27, 2014).

The Board must create bylaws and will not be compensated except for travel. Similar to the Council, vacancies will be filled as provided in the bylaws, directors will serve 3-year terms, not to exceed two terms, and missing three meetings will be grounds to declare the seat vacant.

The bill amends s. 507.83(6), F.S., to require that the Florida beef assessment be approved by a referendum of cattle producers in the same manner as the Beef Market Development Act. Also like the Beef Market Development Act, the assessment may be increased to be more than \$1 and continued by referendum of the cattle producers. The bill requires the first referendum to be held within 180 days of July 1, 2015, and provides it may not be held more often than once every 3 years. The Commissioner must provide notice of a referendum 90 days in advance. Notice of a referendum must be given at least once in trade publications, the public press, and statewide newspapers at least 30 days before the referendum is held. The Commissioner may designate the referendum to take place for at least 5 days, but not more than 10 days. A simple majority vote will determine any issue that requires a referendum.

Under s. 570.83(10), F.S., the assessment collection procedure of the Cattle Market Development Act will be similar to the Beef Market Development Act. The only notable differences are that collection agents must forward the money to the Board by the 15th of each month and collection agents will not be entitled to deduct 2.5 percent of the amount collected to retain as a reasonable collection allowance prior to remitting the funds to the Board.

Under s. 507.83(11), F.S., cattle producers will be entitled to an unconditional refund of the assessment if requested.

Lastly, the bill amends s. 570.83(13), F.S., to change the provision requiring the Act to be repealed by October 1, 2019 if not reviewed and saved by the Legislature to reflect that the bill creates a new DSO and must be reviewed and saved by the Legislature by October 1, 2020.

The Board will be subject to the oversight, reporting, and audit requirements of ss. 20.058 and 215.981, F.S., because it is a direct support organization.

B. SECTION DIRECTORY:

Section 1. Amends s. 570.83, F.S., creating the Cattle Market Development Act.

Section 2. Providing an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The economic impact of the bill on cattle producers is indeterminate. If an assessment is approved by referendum of 1,800 producers or 10 percent, whichever is less, each producer will be assessed \$1 for every head of cattle sold, including both cow and calf. While the bill initially limits the assessment to not more than \$1 per head of cattle sold, the assessment may be raised by referendum. However, a producer is entitled to a full refund on request.

The bill eliminates the 2.5 percent collection allowance to collection agents.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

As discussed above, the U.S. Supreme Court held that the national beef assessment program did not violate the First Amendment because it compelled financial support of government speech, which is fundamentally different from compelled funding of private speech.³⁷ Compelled funding of government speech is constitutional because, as a general rule, government may support valid programs and policies by taxes or other exactions binding on protesting parties.³⁸ The U.S. Supreme Court found the national beef assessment program was government speech because the U.S. Department of Agriculture (USDA) controlled the message coming from the Beef Board by having the power to appoint and remove the Beef Board's Operating Committee, specifying what the message may be and the elements of the message, and maintaining final approval authority over the message.³⁹

The bill does not have the same control mechanisms as the national beef assessment program. However, ss. 20.058 and 215.981, F.S., subjects DSOs (like the proposed Florida Cattle Enhancement Board) to governmental oversight and auditing. DSOs must report to their parent agency every year, are subject to modification or termination every year, and must be audited on a regular basis by their parent agency.⁴⁰ Thus, one could argue this oversight is sufficient to demonstrate that the proposed Florida beef assessment program is government speech, and therefore, may be found constitutional.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

³⁷ Johanns, at 559.

³⁸ Id.

³⁹ Id. at 560 – 561.

⁴⁰ Section 20.058 and 215.981, F.S.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 10, 2015, the Agriculture & Natural Resources Subcommittee adopted three amendments and reported the bill favorably as a committee substitute. The amendments made the following revisions to the bill:

- Amends s. 570.83(13), F.S., to change the provision requiring the Act to be repealed in 2019 if not reviewed and saved by the Legislature to reflect that the bill creates a new DSO and must be reviewed and saved by the Legislature in 2020;
- Corrects a drafting error to change “council” to “board” in s. 570.83(7)(a)11., F.S.; and
- Authorizes the Board to accept grants and gifts and make payments to organizations for services performed.

This analysis is drafted to the bill as amended and passed by the Agriculture & Natural Resources Subcommittee.